

	Portales Police Department	SOP #	119.01
	Standard Operating Procedure & Policy	ADM. #	19.01 19.06 19.02 19.07 19.03 19.08 19.04 19.09 19.05
	Internal Affairs		
1700 N. Boston St. Portales NM, 88130			
(575) 356-4404		Approval:	Pat Gallegos, Chief of Police

I. PURPOSE

The goal of all internal investigations is to ensure Department integrity is maintained through a fair and impartial system. While there are certain situations which require an Internal Affairs investigation, there are others which can be easily and effectively resolved through supervisory investigations.

This agency shall accept and investigate objectively, impartially and fairly all complaints of employee conduct to determine the validity of allegations and to impose any disciplinary actions that may be justified in a timely and consistent manner. All complaints will be documented using the complaint form. (New Mexico Standard ADM.19.07)

II. DEFINITIONS

- A. Complaint: Grievance against a department employee where he/she is alleged to have violated a policy of the Portales Police Department Rules and Regulations, City of Portales Personnel Manual, City Ordinance, State Statute, or Civil Rights Act.
- B. Supervisory Investigation: This category of investigations can be initiated and investigated by any supervisor. These investigations can include, but are not limited to violations of policy or statute. Investigations can be conducted in the absence of a complaint.
- C. Internal Affairs Investigation: An investigation conducted at the direction of the Chief of Police, performed in an effort to determine if any of the Department's Rules and Regulations or rules set out in the City of Portales Personnel Manual have been violated.
- D. Complaint Package: Information packages containing complaint forms, information on the complaint procedures used by the Portales Police Department and actions the public can expect from this agency in response to their complaint. (New Mexico Standard ADM.19.09)

- E. The outcomes (findings) per allegation of departmental directive violation and criminal violation will be classified as:
1. Exonerated--that the behavior in question was proper in all terms of the requirements of applicable law and departmental directive.
 2. Not Sustained—insufficient evidence either to prove or disprove the allegation(s)
 3. Sustained—the allegation is supported by sufficient evidence, and/or acts of misconduct where discovered during the investigation which were not alleged in the complaint.
 4. Unfounded—that the allegation, upon investigation, is determined to be without basis in fact.
 5. Dismissed (NOT INVESTIGATED)--that for administrative reasons the complaint is administratively inactivated prior to investigation, or after investigation has begun.

III. CITIZEN COMPLAINTS

- A. The receiving supervisor should notify his chain of command and subsequently the Chief of Police.
- B. The Chief of Police will determine the method of investigation.
- C. Complaining parties wishing to lodge a complaint on an employee should be advised of the procedure for filing the complaint. This information is available in written form.
- D. At their request the complaining party will be given a Complaint Form to complete.
- E. After completing the form, the complainant should be asked to sign it. The signature will be witnessed by the receiving supervisor. If the complainant refuses to sign the complaint it should be noted on the form “Refused to Sign” and initialed by the receiving supervisor.
- F. The complainant will be given a copy of the form and the original shall be maintained by the Department.
- G. The complaint will be sealed and forwarded to the Chief’s Office for investigation determination.
- H. The supervisor may be requested to do a Supervisory Investigation, which would include a written report from the officer in the allegation.

- I. No formal statements should be taken unless an investigation is directed by the Chief of Police.
- J. All Supervisory Investigations should be concluded and submitted within seven working days unless extenuating circumstances exist.
- K. A Supervisory Investigation should include:
 - 1. Copy of complaint
 - 2. Written response from officer
 - 3. Any radio logs or police reports that are involved
 - 4. Written report(s) from other officers involved
 - 5. Names and addresses of other witnesses of the incident
- L. The Investigative Report will be forwarded to the Chief of Police through the Division Commander.
- M. The Division Commander or designee will contact the complainant as to the results of the investigation.
- N. An Internal Affairs Investigation may be conducted at the discretion of the Chief of Police.

IV. UNSIGNED AND ANONYMOUS COMPLAINTS

Unsigned and anonymous complaints should be investigated if these complaints meet the criteria as set forth in the definition of a complaint.

- A. If a citizen calls the police department or comes to the station to complain on an employee, the complaint should be documented even if the citizen does not want to complete a Citizen Complaint.
- B. The receiving supervisor will forward the information to the Division Commander in written form (a memo will suffice).

V. ACTIONS TAKEN ON COMPLAINTS

The Department encourages the resolution of complaints. In order to facilitate this goal, the following methods may be used:

- A. Mediation: A meeting between the accused officer, the complainant and the officer's supervisor.
- B. Corrective Action/Disciplinary recommendation: Following Department policy, the investigating supervisor shall make a recommendation.

VI. MAINTENANCE/YEARLY SUMMARY

The Chief of Police will maintain all completed Citizen Complaint investigations and investigative reports. These records will be secured and maintained separate from other department records. These records will be maintained for a period of one calendar year.

Prior to destroying the complaint files the Professional Standards Officer will review the complaints and prepare a summary of the complaints for the Chief of Police. This summary can include the following:

- A. Number of complaints received in a calendar year;
- B. Types of complaints received;
- C. Names of officers involved in the complaints;
- D. Findings of the complaints.

VII. STATEMENT OF EMPLOYEE'S RIGHTS

In the event an employee becomes the subject of a complaint of a serious nature, procedures have been developed to guard an employee's rights. This order addresses an employee's rights when making statements and in disciplinary actions.

The subject employee must be given a written statement of the allegation of misconduct unless doing so would interfere with the progress of the investigation. When the employee is notified of the allegation of misconduct, he/she shall also be advised of his rights and responsibilities relative to the investigation. (New Mexico Standard ADM.19.06)

VIII. STATEMENTS

In the event an employee is the subject of an investigation which could result in administrative sanctions, the following guidelines will be followed:

- A. Any investigations will follow requirements as set forth in Chapter 29-Article 14, NMSA 1978 Peace Officer's Employer-Employee Relations.
- B. The interview may be postponed for a reasonable time from the time the officer is informed of the interview and the general subject matter thereof.
- C. This section shall not apply to questions from a supervisor in the course of performing normal day-to-day supervisory duties or a request for the preparation of detailed reports.

IX. DISCIPLINARY ACTIONS

When an employee is required to appear before a supervisor for disciplinary action the

employee shall have the following rights:

- A. When two or more supervisors are involved in administering a disciplinary action to an employee, either may request that an audio/video recording be made of the proceedings.
- B. In all cases of disciplinary action it shall be the responsibility of the ranking supervisor administering the disciplinary action to refer the employee to the Grievance procedures and the City Personnel Manual for appeal procedures.

X. CONSTITUTIONAL RIGHTS

When an employee is the subject of a complaint that is criminal in nature, the employee shall be afforded all rights entitled by the Constitution.

The Portales Police Department takes all complaints against its members seriously. The public has a right to expect and demand fair and impartial law enforcement services. To protect the rights of the public and the Department employee, it is necessary that allegations of misconduct are thoroughly investigated.

The goal of all investigations is to ensure Department integrity is maintained through a fair and impartial system. This policy applies equally to sworn and non-sworn personnel.

XI. DEFINITIONS

- A. Complaint: For the purpose of this policy, a complaint alleging misconduct on the part of any employee, regardless of the source, will be referred to simply as a complaint. Citizen Complaints are those generated when a citizen makes an allegation against an employee, regardless of the nature. Administrative investigations are initiated internally concerning an employee. Regardless of the nature or the source, they are investigated following the same procedure.
- B. Internal Affairs: This office is responsible for the investigation of and/or to provide review and monitoring of all complaints. This office is appointed by and serves at the discretion of the Chief of Police. This is designated on a case-by case basis and reports directly to the Chief of Police (see Chain of Command).
- C. The following disposition will be used at the conclusion of any investigation:
 - 1. Exonerated—incident occurred but was lawful and did not violate policy.
 - 2. Not Resolved—insufficient evidence either to prove or disprove the allegation(s)
 - 3. Sustained—evidence sufficient to prove allegations.
 - 4. Sustained as to misconduct not based upon the complaint—where misconduct not alleged in the complaint is substantiated.

5. Unfounded—allegation is false or not factual or the employee was not involved.
6. Policy and Procedure - The investigation revealed that the complaint in effect dealt solely with an objection or criticism against an agency policy or procedure and not against an individual officer.

XII. RESPONSIBILITY

A. Internal Affairs Division

1. The Chief of Police will determine disposition based upon the determination of the investigation and recommendations.
2. At the discretion of the Chief of Police, an Internal Affairs Investigation may be conducted or less serious allegations may be forwarded to a Supervisory Investigation.
3. Internal Affairs may assume primary responsibility for a supervisor's complaint investigation at any stage in the investigative process upon notification of the supervisor involved. Internal Affairs may also initiate an investigation of alleged employee misconduct, with or without a formal complaint, with prior knowledge and approval of the Chief of Police or his designee. (New Mexico Standard ADM.19.02.B)
4. Internal Affairs shall have the following additional responsibilities:
 - a. Maintain a central file for complaints in a secured area and in conformity with records retention requirements of state law. (New Mexico Standard ADM.19.02.A)
 - b. Conduct a regular audit of complaints to ascertain the need for changes in training or policy.
 - c. Maintain statistical and related information to identify trends involving all complaints of excessive force and abuse of authority.
 - d. Track complaints against individual employees to assist in employee risk analysis; and
 - e. Provide the Chief of Police with an annual summary of complaints against employees and final dispositions that may be made available to the public or otherwise used at the discretion of the Chief.
5. Internal Affairs case files and information shall be maintained separately from personnel records. Internal Affairs information is considered

confidential and will be retained under secure conditions controlled by Internal Affairs. (New Mexico Standard ADM.19.02.C)

6. The Chief of Police will notify the officer and the officer's supervisor when a complaint has been filed against them, except in the unusual circumstance when it is determined that it is necessary for the investigation that the supervisor not be informed.
7. Once a complaint is resolved and approved, the designee of the Chief of Police will inform the complainant of the resolution.
8. All completed investigations will be kept secured in the Chief of Police's office

B. Supervisors

1. The primary responsibility for maintaining and reinforcing employee conformity with the standards of conduct shall be with department supervisors.
2. Supervisors shall familiarize themselves with the employees within their span of control. They should closely observe their general conduct and appearance on a daily basis.
3. Supervisors should remain alert for indications of behavioral problems or changes that may affect an employee's normal job performance. When a supervisor perceives an employee may be having or causing problems the supervisor should assess the situation and take the most appropriate action.
4. Supervisors may recommend additional training to refresh and reinforce an employee's skills.
5. Informal intervention may be used by supervisors as follows:
 - a. Determine the extent of any personal or job problems which may be affecting performance, and to offer assistance and guidance.
 - b. Discuss minor and infrequent rule violations and to discuss the substance and importance of the rules with the employee.
6. Supervisors shall document all counseling or additional training used to modify an employee's behavior.
7. The supervisor on duty at the time of the initial complaint from a citizen is responsible for attempting to resolve the area of conflict to the satisfaction of the complainant, if possible. If the area of conflict or misunderstanding cannot be resolved at the time of the complaint, it shall be incumbent upon

the supervisor to obtain sufficient information necessary to initiate an investigation.

8. All complaints shall be forwarded directly to the Chief of Police for determination of investigative procedure. If the complaint has been resolved by the supervisor, a full written detailed description will be forwarded within one working shift of the complaint. The Chief of Police or designee will follow-up to ensure the complaint has been satisfactorily resolved.

C. Employees

1. Any employee who receives a complaint shall immediately notify an on-duty supervisor who is responsible for receiving the initial complaint.
2. All Portales Police Department employees are required to report misconduct by other employees. Although it is encouraged that Officers report complaints through their chain of command, nothing in this policy prohibits any employee from reporting this conduct directly to the Chief of Police.
3. Every employee of this agency has a personal responsibility for, and will be held strictly accountable for, adherence to the agency standards of conduct, rules, policies and procedures.
4. The Portales Police Department has the responsibility for, and will provide to each employee, sufficient and proper training, supervision and policy guidance to ensure all employees are apprised of the demands and requirements of this agency with regard to employee conduct, duties and responsibilities. (New Mexico Standard ADM.19.05)

XIII. COMPLAINT PROCEDURE

A. Authorized Forms

1. Citizen Complaint Form:
2. Administrative Investigation Form or memo:
3. Internal Investigation warning form:

B. Initiation

1. Any person may file a complaint with the department if they feel they have been stopped, searched or treated unfairly and without legally sufficient cause, to include racial, ethnic, or gender-based profiling. No person shall be discouraged from filing a complaint, or discriminated against because they have filed such a complaint.

2. Complaints may be given in person, via mail, telephone, facsimile or email. A complainant will be allowed to file an anonymous, verbal or written complaint. The department will also accept and investigate complaints filed by individuals other than the alleged victim of misconduct (third-party complaints).
3. All complaints shall be documented on the appropriate form.
4. All complaints shall be forwarded directly to the Chief of Police. If the complaint has been resolved by the supervisor at the time of the complaint, it will be forwarded to the Chief of Police indicating it has been resolved. The Chief of Police will determine investigation procedures or designate a person to follow-up on the complaint.
5. A Sergeant within an employee's chain of command, if assigned by the Chief of Police, may conduct Supervisory Investigations. These may be assigned if after preliminary review the complaint is minor in nature (i.e., officers unsafe or illegal driving, conducting him/herself in a rude manner or abuse of scheduled meal breaks). Whenever such a complaint is made, the Chief of Police will assign the complaint for a Supervisory Investigation.

C. Conducting the Investigation Regardless of the nature or the source, all complaints are investigated following the same procedure.

1. A thorough investigation shall be conducted on every complaint against the department or any of its personnel.
2. When possible, the investigation shall include statements taken from all available complainants, witnesses and employees, including the involved employee(s).
3. If complainants or witnesses are reluctant to come to the police department, or are unavailable to be interviewed during business hours, they may be interviewed at alternate sites, including at residences or places of business, and during reasonable weekend or after- business hours. All such interviews will be arranged and conducted so as not to unnecessarily embarrass persons interviewed or result in unnecessary disclosure of confidential information to others, such as employer's, coworkers, clients, customers, family, friends, or neighbors. The investigator will also provide reasonable notice before all complainants and citizen witness interviews.
4. If possible, interviews of complainants, involved employees and witnesses will be recorded. These recordings will be kept as a permanent part of the investigative file. If a complainant or witness refuses to be recorded, the investigating officer will accept a written narrative of the statement and request that it be signed by the complainant or witness.

5. Group interviews will not be conducted and no written statement or 'special report' will be accepted in lieu of an interview. The investigating officer has the authority to question all involved persons and to challenge their version of the facts.
6. In order to interview all parties involved effectively, the investigating officer will review the complaint histories and have available for review the following additional information for: officer activity history, performance evaluations, assignment history, training/qualification records, and criminal history, etc.
7. All employees are obligated to appear for interviews and to answer questions. Failure to do so will lead to discipline up to, and including, termination. Employees are compelled to answer questions during an internal investigation, however are protected by Miranda in a criminal investigation. Truthfulness and candor are required during these interviews. Employees who are the subject of an IA investigation will be informed of their rights and obligations under *Garrity v. New Jersey*, 385 U.S. 493 (1967), and applicable laws. Investigations and interviews will be conducted in accordance with Chapter 29, Article 14, (NMSA 1978).
8. Supervisors on the scene of incidents that result in an investigation will also be interviewed. Supervisors are required to detail their handling of the situation during and after the alleged incident and their observations of the complainant (if any) and officer(s).
9. The investigating officer will canvass the scene of an incident for witnesses as soon as possible after receiving a complaint of misconduct or any other referral. Where possible, a canvass will be completed at the same time of day and/or day of the week on which the incident was alleged to have occurred.
10. The investigating officer will collect all appropriate evidence (except that which cannot be obtained from an uncooperative complainant or other witness) to document each incident of potential misconduct, or any injury of a complainant, including but not limited to photographs of injuries and medical records (by requesting a medical record release and/or the assistance of the injured person to obtain the medical records.)
11. The investigating officer will assess the propriety of all officer conduct during an incident that is investigated. If, during the course of an investigation, there is reason to believe that misconduct other than that alleged by a complainant (or indicated by a triggering report) has occurred, the conduct will be investigated and findings with respect to such misconduct will be made.

12. All complaints will be investigated in a timely manner. Under normal conditions, the investigation will be completed within 30 days of receipt, except in the case of an especially complex or time-consuming investigation, where the particulars are explained in detail.

D. Examinations

1. As deemed appropriate by the Chief of Police and at the request of the Internal Affairs Investigator, the employee may be requested to submit to further examination.
2. These may include a medical examination, the use of the employee in either in a line-up or photo array, the submission to a polygraph or the submission of financial disclosure statements.
3. Any examinations of this nature are utilized only after all other alternatives have been exercised.

E. Closing the investigation

1. The investigating officer will not close any investigation without rendering a disposition as noted under Definitions. The investigating officer will investigate such complaints to the fullest extent possible to reasonably determine whether the complaint can be corroborated.
2. There is no automatic preference of an officer's statement over a complainant's Statement. In making credibility determinations, the investigating officer should consider the officer's history (including those with dispositions other than 'sustained'), disciplinary records, and the complainant's criminal history for crimes involving untruthfulness. Any credibility determinations should be explained fully in writing.
3. At the conclusion of any investigation, the investigating officer will issue a report describing the alleged misconduct, other misconduct identified during the course of the investigation, a summary of all evidence gathered during the investigation (including an explanation for any absence of evidence), documentation of all credibility determinations, the accused employee's complaint history, the findings with respect to all potential misconduct, and the analysis supporting the findings along with the disposition.
4. At the completion of any Supervisory investigation, the original copy of the complaint and the final investigative report will be forwarded to the Chief of Police for review.
5. Those investigations which are Administrative in nature will be forwarded to the Chief of Police through the appropriate Division Commander, who

will evaluate the investigation, recommend additional investigative steps, or approve the investigation.

6. If the Chief, or any senior staff with whom he consults, do not agree with the disposition, they will not attempt to influence the findings of the investigator, but will detail his or her rationale, in writing, and the Chief will render express findings and a final disposition.
7. Upon completion the completed file will be maintained in the personnel filing cabinet in the Executive Assistant's office.
8. Upon completion of the completed investigation the Department will notify the complainant concerning the disposition of the complaint.

XIV. DISCIPLINE

- A. At the conclusion of an investigation and after the disposition has been made; appropriate discipline will be recommended using the department Discipline policy.
- B. In deciding the appropriate discipline for an employee who is the subject of a 'sustained' disposition, the need for non-punitive steps will be evaluated. These may include, but not be limited to, remedial training, assignment to a field training officer, transfer or reassignment.

XV. INVESTIGATIONS BY OTHER AGENCIES

- A. All Department personnel, upon becoming aware that they or another employee are the subject of or witness in an investigation by an outside law enforcement agency, will notify their immediate supervisor before making any statements to representatives of the outside agency as soon as possible.
- B. This procedure will ensure that all personnel are fully informed of their applicable legal rights, which may include, but not be limited to:
 1. Talking with an attorney of their choice, if personnel are the subject of a criminal investigation.
 2. Being fully advised of their rights.
 3. Having a recorder present during the interview.
- C. This requirement may be waived if the officer involved shooting protocol is invoked.